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10 UNITED STATES DISTRICT COURT  
11 DISTRICT OF OREGON

12 PAUL A. MEUNIER,  
13 Plaintiff,  
14 v.  
15 THE NORTHWESTERN MUTUAL LIFE  
16 INSURANCE COMPANY,  
17 Defendant.

Case No.

**COMPLAINT FOR DAMAGES**

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26
- (1) **Breach of Insurance Policy Contracts**  
(2) **Request for Declaratory Relief**

**JURY TRIAL DEMANDED**

Plaintiff alleges:

**I. PARTIES**

1. Plaintiff is a resident of the State of Oregon.
2. Defendant is a corporation organized and existing under the laws of the State of Wisconsin, is duly authorized to transact business in the State of Oregon, and conducts business in this district.



1           11.     Shortly thereafter, plaintiff submitted a claim for partial disability benefits to  
2 defendant.

3           12.     Defendant reviewed plaintiff's claim, and determined that plaintiff qualifies for  
4 partial disability benefits under the terms of both of his policies.  
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6           13.     Under the terms of plaintiff's policies, he is entitled to receive a "Proportionate  
7 Benefit" from defendant if he is partially disabled.

8           14.     Plaintiff's policies include a section that sets forth a method for calculating the  
9 insured's Proportionate Benefit. This section states that:  
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11                   "[I]f the insured has at least an 80% Loss of Earned Income the  
12 Proportionate Benefit amount will be 100% of the Full Benefit."

13           15.     In its review of plaintiff's claim, defendant determined that plaintiff has at least  
14 an 80% Loss of Earned Income as a result of his disability, and, therefore, he is entitled to receive  
15 a Proportionate Benefit that is 100% of his Full Benefit.  
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17           16.     In its review of plaintiff's claim, defendant calculated the Full Benefit of plaintiff's  
18 policy number D1088078 to be \$14, 049 per month. This calculation was wrong. The correct  
19 calculation should be \$22,492 per month.

20           17.     In its review of plaintiff's claim, defendant calculated the Full Benefit of plaintiff's  
21 policy number D1098423 to be \$2,342 per month. This calculation was wrong. The correct  
22 calculation should be \$3,749 per month.  
23

24           18.     Defendant made mistakes in its calculation of the Full Benefit amount provided  
25 for by both of plaintiff's policies because it failed to take into account all of the annual increases  
26 in the Full Benefit amount that are provided for by the terms of the policies.

1           19. Both of plaintiff's policies include a section entitled "Future Increase Benefit  
2 (FIB)." Hereinafter, this section of plaintiff's policies will be referred to as the "FIB section."

3           20. The FIB section that is in both of plaintiff's policies provides for a minimum 4%  
4 annual increase in the amount of plaintiff's Full Benefit. Specifically, the FIB section states in  
5 its relevant part as follows:  
6

7                   **1. THE BENEFIT**

8                   The Company will annually index the Full Benefit on each policy  
9 anniversary to reflect increases in consumer price levels, subject to the  
10 terms and conditions in this Benefit. The increased coverage which  
11 results from the indexing will remain in effect for as long as the policy is  
12 in force and premiums are paid for the increased Full Benefit. Any  
benefit that is based on the amount of the Full Benefit will be increased  
in proportion to the increase in Full Benefit. ...

13                   **Minimum and Maximum Increase.** The Full Benefit for a policy year will not be less  
14 than 104% of the Full Benefit for the prior policy year. The Full Benefit for a policy year  
15 will not be more than 108% of the Full Benefit for the prior policy year.

16           21. The Full Benefit amount of plaintiff's policy number D1088078 was \$11,545  
17 when plaintiff first purchased this policy from defendant in 1994. The Full Benefit amount for  
18 this policy increased to \$22,492 pursuant to the policy's FIB section by the time plaintiff became  
19 disabled in April 2011.  
20

21           22. The Full Benefit amount of plaintiff's policy number D1098423 was \$2,000 when  
22 plaintiff first purchased this policy from defendant in 1995. The Full Benefit amount of this  
23 policy increased to \$3,749 pursuant to the policy's FIB section by the time plaintiff became  
24 disabled in April 2011.  
25

26           ///

1           23.     When defendant made its decision to honor plaintiff's claim for partial disability  
2 benefits, it notified plaintiff that it had calculated the Full Benefit amount for plaintiff's policy  
3 number D1088078 to be \$14,049 (and not \$22,492) and the Full Benefit amount for his policy  
4 number D1098423 to be \$2,342 (and not \$3,749.)  
5

6           24.     Plaintiff then pointed out to defendant that it had made mistakes in its calculation  
7 of the Full Benefit provided for by each of his policies. Plaintiff notified defendant that pursuant  
8 to the FIB section of his policies, he was entitled to receive a Full Benefit in the amount of  
9 \$22,492 for policy number D1088078, and a Full Benefit in the amount of \$3,749 for policy  
10 number D1098423.  
11

12           25.     In response, defendant asserted that the FIB sections in both of plaintiff's policies  
13 stopped being effective in 1999. According to defendant, this meant that as of 1999 plaintiff was  
14 no longer entitled to receive annual 4% increases in the calculation of the Full Benefit of his  
15 policies.  
16

17           26.     Defendant notified plaintiff that it would pay him a monthly disability benefit in  
18 the amount of \$14.049 for policy D1088078, and no more. Defendant also notified plaintiff that  
19 it would pay him a monthly disability benefit in the amount of \$2,342 for policy number  
20 D1098423, and no more.

21                           **IV.   FIRST CLAIM FOR RELIEF**

22                           **(Breach of Insurance Policy Contract Number D1088078)**

23           27.     Plaintiff's insurance policy number D1088078 provides for a 91 day waiting  
24 period following the onset of the insured's disability before monthly disability benefits become  
25 payable.  
26

28. Defendant started paying plaintiff monthly disability benefits pursuant to policy number D1088078 in August 2011.

29. Since August 2011, defendant has paid plaintiff a monthly disability benefit pursuant to policy number D1088078 in the amount of \$14,049 per month. Defendant has refused to pay plaintiff a monthly benefit in the amount of \$22,492 per month, which is the amount of the monthly benefit that plaintiff is entitled to receive under the terms of this policy.

30. Defendant has thereby breached the contract of insurance that is set forth in policy number D1088078.

31. As a result of defendant's breach of this contract, plaintiff has suffered monetary damages at the rate of \$8,443 per month since August 2011. The total amount of damages plaintiff has suffered to date is \$84,430.

32. Plaintiff will continue to suffer monetary damages as long as defendant continues to fail to provide plaintiff the full monthly disability benefit that he is entitled to receive under the terms of policy number D1088078.

33. Pursuant to ORS 82.010, plaintiff is entitled to an award of prejudgment interest on the amount of the monthly benefits that defendant has wrongfully withheld from him since August 2011.

34. Plaintiff has been forced to hire an attorney to contest defendant's decision regarding the calculation of his monthly disability benefits, and to bring this insurance coverage lawsuit against defendant. Accordingly, plaintiff is entitled to an award of his attorney fees incurred in this case pursuant to ORS 742.061 .

**V. SECOND CLAIM FOR RELIEF**  
**(Breach of Insurance Policy Contract Number D1098423)**

35. Plaintiff realleges and incorporates by reference the allegations set forth in paragraphs 1 through 26, above.

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1           36. Plaintiff's insurance policy number D1098423 provides for a 91 day waiting  
2 period following the onset of the insured's disability before monthly disability benefits become  
3 payable.

4           37. Defendant started paying plaintiff monthly disability benefits pursuant to policy  
5 number D1098423 in August 2011.

6           38. Since August 2011, defendant has paid plaintiff a monthly disability benefit  
7 pursuant to policy number D1098423 in the amount of \$2,342 per month. Defendant has refused  
8 to pay plaintiff a monthly benefit in the amount of \$3,749 per month, which is the amount of the  
9 monthly benefit that plaintiff is entitled to receive under the terms of this policy.

10          39. Defendant has thereby breached the contract of insurance that is set forth in policy  
11 number D1098423.

12          40. As a result of defendant's breach of this contract, plaintiff has suffered monetary  
13 damages at the rate of \$1,407 per month since August 2011. The total amount of damages  
14 plaintiff has suffered to date is \$14,070.

15          41. Plaintiff will continue to suffer monetary damages as long as defendant continues  
16 to fail to provide plaintiff the full monthly disability benefit that he is entitled to receive under  
17 the terms of policy number D10898423.

18          42. Pursuant to ORS 82.010, plaintiff is entitled to an award of prejudgment interest  
19 on the amount of the monthly benefits that defendant has wrongfully withheld from him since  
20 August 2011.

21          43. Plaintiff has been forced to hire an attorney to contest defendant's decision  
22 regarding the calculation of plaintiff's monthly benefits, and to bring this insurance coverage  
23 lawsuit against defendant. Accordingly, plaintiff is entitled to an award of his attorney fees  
24 pursuant to ORS 742.061.

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**VI. THIRD CLAIM FOR RELIEF**  
**(Request for Declaratory Relief)**

44. Plaintiff realleges and incorporates by reference the allegations in paragraph 1 through 26, above.

45. With respect to plaintiff's policy number D1088078, plaintiff is entitled to declarations by this court that:

- (a) The FIB section of this policy provides for a minimum 4% annual increase in the Full Benefit of the policy.
- (b) Since this policy was issued in 1994, plaintiff has been entitled to receive uninterrupted and continuous annual 4% increases in the Full Benefit amount of this policy, as provided for by the FIB section of the policy.
- (c) Defendant was not entitled to terminate the effectiveness of the FIB section of this policy in 1999.

46. With respect to plaintiff's policy number D1098423, plaintiff is entitled to declarations by this court that:

- (a) The FIB section of this policy provides for a minimum 4% annual increase in the Full Benefit of the policy.
- (b) Since this policy was issued in 1995, plaintiff has been entitled to receive uninterrupted and continuous annual 4% increases in the Full Benefit amount of this policy, as provided for by the FIB section of the policy.
- (c) Defendant was not entitled to terminate the effectiveness of the FIB section of this policy in 1999.

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